IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 457 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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INKO @ YUNUSBHAI YAKUBBHAI VORA - Applicant(s)

Versus

THE STATE OF GUJARAT &1 - Respondent(s)

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Appearance :

MR GM JOSHI for Petitioner No(s).: 1.

Mr.P.D.Bhate, APPfor Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 01/07/2005

ORAL JUDGMENT

1. By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the order of externment dated 20.07.2004 passed by respondent no.2 as well as the order dated 13.10.2004 passed by respondent no.1 dismissing the appeal preferred by the petitioner against the order of externment dated 20.07.2004.
2. It appears from the record that the show cause notice dated 12.4.2004 came to be served upon the petitioner by the Sub-Divisional Magistrate, Dholka Prant, Dholka under Section 56(a) of the Bombay Police Act, 1951 ("the Act" for short). It was alleged in the said show cause notice that the petitioner was dangerous person and was indulged in anti-social and illegal activities. It was alleged that on account of terror and fear of the petitioner, none was coming forward to file the complaint or depose against the petitioner. In the said show cause notice, six registered cases have been mentioned against the petitioner. The petitioner filed written reply to the show cause notice on 5.5.2004 and denied all the allegations levelled in the show cause notice. Ultimately, the order of externment came to be passed against the petitioner on 20.07.2004 by respondent no.2 which was served upon the petitioner on 2.8.2004.
3. Being aggrieved by the said order of externment dated 20.07.2004, the petitioner preferred the appeal under Section 60 of the Act before the Joint Secretary, Home Department, Gandhinagar which came to be rejected vide order dated 13.10.2004. Against the aforesaid orders dated 20.07.2004 and 13.10.2004, the present Special Criminal Application is filed by the petitioner under Articles 226 and 227 of the Constitution of India.
4. Heard Mr.M.J.Shelat for Mr.G.M.Joshi, learned advocate appearing for the petitioner and Mr.P.D.Bhate, learned APP for the respondents at length.
5. The impugned order of externment came to be challenged by the petitioner on various grounds. It is mainly contended by the learned advocate appearing for the petitioner that the impugned order of externment is passed by the externing authority after a great lapse of time. i.e., delay of more than three months from the date of issuance of notice, whereas the externment order came to be passed on 20.7.2004. It is submitted that there is no material on the part of externing authority to say that the petitioner was indulging in the alleged illegal activities through his associates in the adjoining districts, and, therefore, subjective satisfaction arrived at by the externing

authority is vitiated. It is further submitted that the externing authority has relied upon statement of anonymous witnesses who have deposed against the petitioner, however, the externing authority has not taken care as to see the genuineness, reasonable and veracity of those statements, and, therefore, the externing authority has passed the impugned order hastily and without application of mind. It is, therefore, requested to quash and set aside the impugned order of externment.

6. On the other-hand, Mr.Bhate, learned APP has opposed this petition and has tried to justify the show cause notice and the impugned order. He submitted that the offence registered against the petitioner is considered while passing the order. He submitted that the externing authority has recorded the subjective satisfaction while passing the order, and, therefore, it is requested that this Court may not interfere with the impugned order and dismiss the petition.

7. Upon perusal of the scheme of the Act, it transpires that before passing any order of externment under Section 56 of the Act, the externing authority is required to issue a notice to the proposed externee under Section 59 of the Act which has to be specific and in detail. At this stage, reference is required to be made to the decision in the case of Aswin Chandulal Jaishwal Vs. The Deputy Commissioner of Police, Vadodara City, reported in 1989(2) GLR 1429, in para 9, this Court has observed as under.:

1. In this view of the matter, it is the duty of the respondent authority to give effective and reasonable opportunity to the petitioner by referring all the materials taken into consideration while passing the impugned order. If the material relied upon by the authority while passing the impugned order is not disclosed in the show cause notice and the same is considered in the externment order, it amounts to non-giving effective and reasonable opportunity for filing the reply against the show cause notice. Under the circumstances, the impugned order of externment dated 20.7.2004 passed by respondent no.2 which is confirmed in appeal vide order dated 13.10.2004 deserves to be quashed and set aside.

2. For the reasons stated above, this petition is allowed. The order of externment dated 20.7.2004 passed by the Sub-Divisional Magistrate, Dholka Prant, Dholka and confirmed in Appeal by the Joint Secretary, Home Department, Government of Gujarat vide order dated 13.10.2004 under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly

with no order as to costs.Direct service is permitted.

(Sharad D.Dave,J)

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